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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,642	08/01/2003	Joseph R. Habert	1966-152	2756
22440	7590	07/21/2005		
GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 100160601			EXAMINER HOEY, ALISSA L	
			ART UNIT 3765	PAPER NUMBER

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,642

Applicant(s)

HABERT, JOSEPH R.

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/20/05 has been entered.

Response to Amendment

2. The amendment of 05/06/05 has been entered amending claims 1 and 21 and newly adding claim 22. Claims 1-19, 21 and 22 are rejected below.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the claim language of claim 1, 21 and 22 detailing “..stuffing conforming to the shape of the skin” is not found in the specification.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the claim language of claim 22 detailing “..the indicia on the body of the sock.....is recognized as complete without perceiving the object as part or as a continuation thereof” is not found in the specification.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox (US 5,933,866) in view of Ellingson (US 6,216,279).

In regard to claim 1, Fox teaches a three dimensional object (36, 56) having a three dimensional shape when stuffed attached to a garment (column 3, lines 35-46). The object (36, 56) inherently includes a skin and stuffing which conforms to the shape of the object (column 3, lines 35-46). The three dimensional shape of the object being primarily determined by the skin filled with the stuffing (column 3, lines 35-46). The object is formed separately from and is not formed integrally with the garment body (figures 1 and 2). The skin of the object is closed and the interior of the object is not in communication with the interior of the garment body (figures 1 and 2). The indicia on the garment body a being related visually or texturally to the object (Figures 1, 3 and 4).

However, Fox fails to teach the garment being a sock having a sock body with a toe end, a foot end and a foot opening with the object located near the foot opening.

Ellingson teaches a sock garment (14) having a sock body (16) with a toe end, a foot end, a foot opening with an object (210) removably attached to the sock near the foot opening (224, 222). The object (210) being a three dimensional decorative object.

In regard to claim 2, Fox teaches the object being a miniaturized toy (column 2, lines 4-5).

In regard to claim 3, Fox teaches the object in the form of an animal head (16).

In regard to claims 4-6, it would have been obvious to have provided the three dimensional object in any form as desired as long as it matches the two-dimensional design on the garment and can be played with by the user. The object taking the form of an animal, an electronic device, or a cellular phone would be obvious to one of ordinary skill in the art depending upon the desired aesthetic end use of the garment.

In regard to claim 7, Fox teaches the indicia being two-dimensional (column 2, lines 6-19).

In regard to claim 8, Fox teaches the indicia comprises a word (figure 4).

In regard to claims 9, 10, 18 and 19, it would have been obvious to have provided the two dimensional indicia in any form as desired as long as it relates to the three-dimensional object on the garment. The indicia taking the form of a phrase, a number, a word a word that embodies an act performed during by a user or a creation of a genuine version of the object or a phrase the is normally associated with the object would be obvious to one of ordinary skill in the art depending upon the desired aesthetic end use of the garment.

In regard to claim 11, Fox teaches the indicia comprises a visual illustration (figures 1 and 3).

In regard to claim 12, Fox teaches the visual illustration is of a fictional character (figure 1).

In regard to claim 13, Fox teaches the indicia comprises a design (figures 1 and 3).

In regard to claim 14, Fox teaches the indicia comprising any combination of text, word, phrase, number or illustration (figures 1, 3 and 4).

In regard to claim 15, Fox teaches the indicia being visually similar to the object (figures 1, 3 and 4).

In regard to claim 16, Fox teaches the indicia comprising a two-dimensional drawing of the object (figure 1).

In regard to claim 17, Fox teaches the indicia comprises a word which is the common name of the object (figure 4).

In regard to claims 21 and 22, Fox teaches a decorative garment having a three-dimensional object that has a three-dimensional shape when stuffed (column 3, lines 35-46). The object is attached the garment and includes a pre-formed skin and a deformable stuffing which conforms to the shape of the object (column 3, lines 35-46). The three-dimensional shape of the object being primarily determined by the skin filed with the stuffing (column 3, lines 35-46). The object if formed separately from and is not formed integrally with the garment body (figures 1 and 2). The skin of the object is closed and the interior of the object is not in communication with the interior of the garment body and indicia on the garment body related visually or textually to the object (figures 1-4). Further, the indicia comprises one of more elements selected from the group consisting of text, words, phrases, numbers, illustrations, designs and

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combinations thereof that can be recognized as complete without perceiving the object as a part of a continuation thereof (figures 1, 3 and 4).

However, Fox fails to teach the garment being a sock having a sock body with a toe end, a foot opening and an removable decorative object attached to the sock near the foot opening.

Ellingson teaches a sock having a sock body with a toe end, a foot opening and a removable decorative object attached to the sock near the foot opening (figure 1 and 5).

It would have been obvious to have provided the garment having related two and three-dimensional designs of Fox with the sock of Ellingson, since the two and three dimensional design of Fox found on a sock garment would provide a sock garment that does not only have a two dimensional figure but also related two dimensional design to add to the aesthetic design of the sock garment creating a more pleasing garment to the user, even when the three-dimensional object is removed for laundering purposes.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Burn, Siciliano, Bouchoucha, Wells, Kenneth, Huff and Lawler are all cited to show closely related garment articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alissa L. Hoey
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